SARASWATHY DEVI NADCHATIRAM

v.

VIJAYALAKSHMI DEVI NADCHATIRAM

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABDUL MALEK AHMAD JCA
DENIS ONG JCA
[CIVIL APPEAL NO: W-02-251 OF 1996]
10 NOVEMBER 1997

LEGAL PROFESSION: *Practice of law - Practice and etiquette - Solicitor having personal relationship with clients - Legal Profession (Practice and Etiquette) Rules 1978, r. 3 - Solicitor deriving pecuniary interest in case - Legal Profession (Practice and Etiquette) Rules 1978, r. 27(a) - Whether can still act*

CIVIL PROCEDURE: *Originating summons - For an order to prevent solicitor from acting in certain cases - No details of claim set out in the originating summons to show cause of action - Rules of the High Court 1980, O. 7 r. 3 - Rules of the High Court 1980, O. 6 r. 2(1)(a)*

The plaintiff/respondent had brought an action by originating summons against her sister, the defendant/appellant, for an order enjoining the appellant (who is an advocate and solicitor) and her law firm from acting in respect of several cases. In the heading of the originating summons the plaintiff had listed out five cases to be included in this application but in the order applied for, in addition to the said five cases, the plaintiff had included several other matters not referred to in the heading.

The originating summons also did not contain any details of the questions on which the plaintiff was seeking the court's determination or direction. Instead, the affidavit filed in support of the originating summons showed that the complaint was twofold, firstly, that the appellant is related by blood to the parties she was representing and secondly, that the appellant had a direct pecuniary interest in two of the cases.

The judge below granted all the orders sought by the respondent thus preventing the appellant and her firm from acting in all those cases referred to in the order. The appellant appealed against the decision of the judge below.

Held:
Per NH Chan JCA

[1] The plaintiff by her originating summons could only seek to prevent the defendant from acting in the five cases which appeared in both the heading and the orders claimed. As for the other matters for which the orders were sought, they did not appear to have any connection with the cases referred to in the heading and should have been ignored by the judge in the court below.

[2] In respect of Civil Suit No: 22-54-95, the plaintiff was not even a party to the suit and so she had no *locus standi* to ask for any order against the defendant in that suit.

[3] The proper course for the respondent was to make her applications under their respective individual action so that the relevancy of the application can be perceived immediately. The plaintiff, by lassoing in other matters, had confused and misled the judge below into making the type of orders which he would not have made if he had been fully apprised of the situation.

[4] An originating summons is just like a pleading in a statement of claim; it must contain a concise statement of the relief or remedy claimed with sufficient particulars to identify the cause of action in respect of which the relief or remedy is claimed. An originating summons, like a statement of claim, must disclose a cause of action. If the summons itself, does not disclose any cause of action, it can be dismissed.

[5] The instant originating summons did not contain any details of the questions on which the plaintiff was seeking the court's determination or direction nor did it contain sufficient particulars so as to show what the plaintiff's cause of action was in respect of which she was asking relief or remedy. It was not enough by merely asking the court for an injunction against the defendant and her firm from acting without showing why the defendant or her firm should not act in the proceedings. Since this was not shown, no cause of action was disclosed in the originating summons against the defendant and the originating summons ought to have been dismissed.

[6] It is not the business of the courts to interfere with the wishes of litigants to legal representation by practitioners of their choice. Rule 3 of the Legal Profession (Practice and Etiquette) Rules 1978 ("the Practice and Etiquette Rules") does not prohibit a solicitor from acting for his client merely because he is related by blood to this client. For the prohibition to apply,

the relationship must be that of a personal one, meaning an individual or a private relationship which is beyond that of a solicitor and client relationship.

[7] For the prohibition in r. 27(a) of the Practice and Etiquette Rules to apply, it must be shown that the financial benefits of the transaction were received by the defendant directly in connection with and in contemplation of the two suits. This was not the case here.

[Appeal allowed with costs.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Plaintif/responden telah memulakan tindakan melalui saman pemula terhadap saudara perempuannya, defendan/perayu, untuk mendapatkan satu perintah yang menyuruh perayu (yang merupakan seorang Peguambela dan Peguamcara) dan firma guamannya daripada bertindak berhubung dengan beberapa kes. Dalam tajuk saman pemula tersebut plaintif telah menyenaraikan lima kes untuk dimasukkan dalam permohonan ini tetapi menurut aturan yang dipohon, tambahan kepada kelima-lima kes tersebut, plaintif telah memasukkan beberapa perkara lain yang tidak dirujuk dalam tajuk itu.

Saman pemula tersebut juga tidak mengandungi sebarang butiran mengenai persoalan-persoalan ke atas yang mana plaintif berusaha untuk mendapatkan penentuan atau arahan mahkamah. Sebaliknya, afidavit yang telah difailkan bagi menyokong saman pemula tersebut menunjukkan bahawa aduan itu berganda, pertamanya, bahawa perayu tersebut mempunyai pertalian darah kepada pihak-pihak yang beliau wakili dan keduanya, bahawa perayu mempunyai kepentingan kewangan secara langsung dalam kedua daripada kes-kes tersebut.

Hakim di bawah telah memberikan kesemua perintah-perintah yang dipohon oleh responden yang dengan itu menghalang perayu dan firmanya daripada bertindak dalam kesemua kes-kes tersebut yang dirujuk dalam perintah tersebut. Perayu telah merayu terhadap keputusan hakim di bawah.

Diputuskan:
Oleh NH Chan HMR

[1] Plaintif melalui saman-saman pemulanya hanya boleh memohon untuk menghalang defendan daripada bertindak dalam kelima-lima kes tersebut yang mana terdapat dalam kedua-dua tajuk dan perintah-perintah yang dipohon. Berhubung dengan perkara-perkara lain bagi yang mana perintah telah dipohon, namapaknya perkara-perkara itu tiada kaitan dengan kes-kes yang dirujuk dalam tajuk tersebut dan seharusnya telah tidak dihiraukan oleh hakim dalam mahkamah di bawah.

[2] Berhubung dengan Guaman Sivil No. 22-54-95, Mahkamah Tinggi Seremban, plaintif bukan pun merupakan pihak kepada guaman itu oleh yang demikian beliau tidak mempunyai *locus standi* untuk memohon bagi mendapatkan perintah terhadap defendan dalam guaman itu.

[3] Jalan yang sesuai untuk responden adalah dengan membuat permohonan-permohonannya di bawah tindakan individu mereka masing-masing supaya sifat relevan permohonan itu segera kelihatan. Plaintif dengan merangkumi perkara-perkara lain sekaligus, telah mengelirukan dan memperdayakan hakim di bawah membuat jenis perintah-perintah yang mungkin tidak akan beliau buat jika beliau telah dimaklumkan situasi tersebut.

[4] Saman pemula adalah seumpama satu pliding dalam pernyataan tuntutan, ianya mesti mengandungi pernyataan ringkas mengenai relief atau remedi yang dituntut dengan butir-butir yang memadai untuk mengenalpasti kausa tindakan berhubung dengan yang mana relief atau remedi tersebut dituntut. Sesuatu saman pemula, seperti juga pernyataan tuntutan, mestilah mendedahkan kausa tindakan. Jika saman itu sendiri, tidak mendedahkan sebarang kausa tindakan, ianya boleh ditolak.

[5] Saman pemula semasa ini tidak mengandungi sebarang butiran mengenai persoalan di atas yang mana plaintif cuba mendapatkan penentuan atau arahan mahkamah dan tidak juga mengandungi butir-butir yang mencukupi bagi menunjukkan bahawa kausa tindakan plaintif adalah berhubung dengan yang mana beliau memohon untuk mendapatkan relief atau remedi. Ianya tidak mencukupi hanya semata-mata meminta mahkamah memberikan injunksi terhadap defendan atau firma beliau tidak seharusnya bertindak dalam prosiding tersebut. Oleh kerana perkara ini tidak ditunjukkan, tiada kausa tindakan didedahkan dalam saman pemula terhadap defendan dan saman pemula itu seharusnya ditolak.

[6] Ianya bukan merupakan hal mahkamah-mahkamah untuk mencampuri kehendak-kehendak atau keinginan litigan-litigan kepada representasi undang-undang oleh pengamal undang-undang yang mereka pilih atau yang mereka mahukan. Kaedah 3 Kaedah-Kaedah Profesyen Undang-Undang (Amalan dan Etiket) 1978 ('Kaedah-Kaedah Amalan dan Etiket') tidak melarang seorang peguamcara daripada bertindak untuk anakguamannya semata-mata kerana beliau mempunyai pertalian darah dengan anakguamannya itu. Untuk menjadikan larangan itu terpakai, pertalian atau perhubungan tersebut seharusnya pertalian yang bersifat peribadi, yang mana bermaksud pertalian individu atau peribadi yang mana adalah di luar lingkungan maksud pertalian seorang peguamcara dan anakguamannya.

[7] Agar larangan dalam k. 27(a) Kaedah-Kaedah Amalan dan Etiket menjadi terpakai, adalah semestinya ditunjukkan bahawa kepentingan atau kemanfaatan kewangan transaksi itu diterima oleh defendan secara langsung berhubung dengan dan dalam memikirkan kedua-dua guaman tersebut. Keadaannya tidak sebegitu dalam kes di sini.

[Rayuan dibenarkan dengan kos.]

Legislation referred to:
Legal Profession (Practice and Etiquette) Rules 1978, rr. 3, 27(a)
Rules of the High Court 1980, O. 5 r. 1, O. 6 r. 2(1)(a), O. 7 r. 3(1)

[Appeal from High Court, Seremban; Originating Summons No: 24-465 of 1995; [1996] 4 CLJ 430]

Appellant in person
For the respondent - Cecil Abraham (Satharuban Sivasubramaniam & CW Lam with him); M/s Satha & Co

Reported by Ling Hea Hoon

JUDGMENT

NH Chan JCA:

The plaintiff Vijayalakshmi, who is the respondent in this appeal, has brought this action by originating summons against her sister Saraswathy. It is necessary to reproduce the heading of the originating summons as it is important to be aware of the matters referred to in the summons. It is follows:

> DALAM MAHKAMAH TINGGI MALAYA, SEREMBAN
> DI DALAM NEGERI SEMBILAN DARUL KHUSUS
>
> SAMAN PEMULA NO 24-465-1995
>
> Dalam Perkara Akta Profesion Undang-Undang 1976
>
> Dan
>
> Dalam Perkara Kaedah Profesion Undang-Undang (Amalan dan Etiket) 1978
>
> Dan
>
> Dalam Perkara Mahkamah Tinggi Seremban Saman Pemula No 24-346-1992, Mahkamah Tinggi Seremban Guaman Sivil No 22-61-1993, Mahkamah Tinggi Seremban Guaman Sivil No

22-95-1993 dan Mahkamah Tinggi Seremban Guaman Sivil No 22-54-1995 (Emphasis added).

Dan

Dalam Perkara Mahkamah Tinggi Kuala Lumpur (Bahagian Sivil) Guaman Sivil No S2-22-562-1993
(Emphasis added.)

ANTARA

VIJAYALAKSHMI DEVI a/p NADCHATIRAM ... PLAINTIF

DAN

SARASWATHY DEVI a/p NADCHATIRAM ... DEFENDAN
(Beramal Undang-undang di bawah nama dan gaya Tetuan N Saraswathy Devi)

In this originating summons, Vijayalakshmi applies for an order enjoining Saraswathy (who is an advocate and solicitor) and her law firm from acting for:

(1) Jegadevan in Case Nos 24-346-1992 and 22-61-1993, 02-175-1994, 02-260-1994 and 02-483-1995;

(2) Suseela Devi in Case Nos 22-95-1993 and 22-54-1995;

(3) Shanti d/o Thiruchelvasegaram in Case No S2-22-562-1993; and

(4) any of the brothers and sisters of the defendant in any proceedings relating to the estate of Nadchatiram and of Nadchatiram Realties (1960) Sdn Bhd (in liquidation) where Vijayalakshmi is a party to the proceedings. (Emphasis added.)

The judge below granted all the orders sought against Saraswathy thus preventing her and her firm from acting in all the matters referred to in the order. Hence this appeal.

Of all the five cases referred to in the heading of the originating summons, it is only in these five cases do the orders applied for have reference to them. They are:

(a) in the matter of Seremban High Court Civil Suit Nos 24-346-1992 and 22-61-1993 where Vijayalakshmi is the plaintiff and Jegadevan is the defendant;

(b) in the matter of Seremban High Court Civil Suit Nos 22-95-1993, where Vijayalakshmi is the plaintiff, and 22-54-1995, where Nadchatiram Realties (1960) Sdn Bhd is the plaintiff and Suseela Devi is the defendant in both cases; and

(c) in the matter of Kuala Lumpur High Court Civil Suit No S2-22-562-1993 where Shanti d/o Thiruchelvasegaram is the plaintiff and Vijayalakshmi and her husband are the defendants.

As for the other matters for which the orders are sought, they do not appear to have any connection with the cases referred to in the heading and should have been ignored by the judge in the court below. Therefore, Vijayalakshmi by her originating summons may only seek to prevent Saraswathy from acting in the five cases, namely Case Nos 24-346-1992, 22-61-1993, 22-95-1993, 22-54-1995 and S2-22-562-1993, which appear in both the heading and the orders which are claimed. But, can she do that? As for Seremban High Court Civil Suit No 22-54-1995, Vijayalakshmi is not even a party to the suit so that she has no *locus standi* to ask for any order against Saraswathy in that suit.

We wish to take the opportunity here in this case to express our disapproval over the manner in which Jayalakshmi has brought this originating summons. The proper course is to make her applications about Saraswathy under their respective individual actions so that the relevancy of the application can be perceived immediately. By doing what she did in this case, Vijayalakshmi had, by lassoing in other matters, confused and, in actual fact, also misled the judge below into making the type of orders which he would not have made if he had been fully apprised of the situation.

What then is Vijayalakshmi's cause of action against Saraswathy in the remaining four cases? She wants to have Saraswathy disqualified from acting for her brother Jegadevan in Seremban High Court Civil Suits Nos 24-346-1992 and 22-61-1993, her sister Suseela Devi in Seremban High Court Civil Suit No 22-95-1993 and Shanti Thiruchelvasegaram in her suit (Kuala Lumpur High Court Civil Suit No S2-22-562-93) against Viiayalakshmi.

Order 7 r. 3 of the Rules of the High Court 1980 ('the RHC') provides that every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or a concise statement of the relief or remedy claimed with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

The instant originating summons does not contain any details of the questions on which Vijayalakshmi is seeking the court's determination or direction nor does it contain sufficient particulars so as to show what her cause of action is in respect of which she is asking relief or remedy. Merely asking the court for an injunction against Saraswathy and her firm from acting in the four remaining civil suits under the Legal Profession Act 1976 or under its Rules is not enough. The originating summons must show why she or her firm should not act in the proceedings. Since this is not shown, no cause of action is disclosed in the originating summons against Saraswathy. On this ground alone, the originating summons ought to have been dismissed.

Order 5 r. 1 of the RHC states that 'civil proceedings in the High Court may be begun by writ, originating summons, originating motion or petition'.

Order 6 r. 2(1)(a) of the RHC states:

> 2(1) Before a writ is issued it must be indorsed:
>
> (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby; ...

Order 7 r. 3(1) of the RHC states:

> 3(1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

So that an originating summons is just like a pleading in a statement of claim, it must contain a concise statement of the relief or remedy claimed with sufficient particulars to identify the cause of action in respect of which the relief or remedy is claimed. In other words, an originating summons, like a statement of claim, must disclose a cause of action. Therefore, if the summons itself, as in the instant case, does not disclose any cause of action, it can be dismissed.

In any case, a look at the affidavit evidence filed in support of the originating summons shows that the complaint of Vijayalakshmi against Saraswathy acting in the cases is twofold:

(1) That Saraswathy is related by blood to the parties that she is representing. Jegadevan is her brother, Suseela Devi is her sister and Shanti is her niece. It has been said that a lawyer who acts for himself has a fool for a client. In the same vein, it can be said that a lawyer who acts for a relative or a close friend may have his vision so clouded that he could not see the wood for the trees. Adages apart, we do not think that it is the business of the courts to interfere with the wishes of litigants to legal representation by practitioners of their choice.

Rule 3 of the Legal Profession (Practice and Etiquette) Rules 1978 ('The Practice and Etiquette Rules') reads:

3(a) An advocate and solicitors shall not accept a brief if he is or would be embarrassed.

(b) An embarrassment arises:

(i) ...

(ii) where there is some personal relationship between him and a party or a witness in the proceedings. (Emphasis added.)

A personal relationship between a solicitor and his client can only mean a relationship (meaning an association) which is personal between them. A working relationship between partners of a firm is not a personal relationship, so that a lawyer can always act for his firm. A sexual relationship between two people is a personal relationship. But a solicitor and client relationship is not a personal relationship. However, there would be a personal relationship between them if their association is something which is more than that of a professional one. There is nothing to suggest that the relationship between Saraswathy and her clients is anything but a professional one which is that of a solicitor and client relationship. There is no personal (meaning individual; private; one's own) relationship between Saraswathy and her kin which is outside that of a professional relationship of solicitor and client. Rule 3 of the Practice and Etiquette Rules does not prohibit a solicitor from acting for his client merely because he is related by blood to his client. For the prohibition to apply, the relationship must be that of a personal one, meaning an individual or a private relationship which is beyond that of a solicitor and client relationship.

and

(2) That Saraswathy has a direct pecuniary interest in the cases. This is what the judge said:

(a) pecuniary interest

> In both Case Nos 24-346-1992 and 22-95-1993, Jegadevan and Suseela Devi rely on an alleged agreement entered into sometime in 1990 (exh. NVD 14). They also rely on a letter dated 12 December 1985 written by their mother, the late Rajapakiam (exh. NVD 12). The documents relied on by the litigants and are disputed confer on the defendant ¼ share in the land held under CT No 16120 Lot 2551 in the Mukim of Rasah, approximately 50 acres in area valued at RM9m and this is in addition to the 10 acres the defendant purchased from Dr Mahadevan.
>
> Rule 27(a) of the Practice and Etiquette Rules 1978 absolutely prohibits an advocate and solicitor from appearing in any matter where he or she is directly pecuniarily interested.

The complaint under this head can only apply to these two cases, that is to say, Vijayalakshmi wants Saraswathy to be disqualified from acting for her brother, Jegadevan in Seremban High Court Civil Suit No 24-346-1992 and her sister, Suseela Devi in Seremban High Court Civil Suit No 22-95-1993 on the ground that Saraswathy has a direct pecuniary interest in these two cases.

Rule 27(a) of the Practice and Etiquette Rules 1978 reads:

> 27(a) An advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested (Emphasis added.)

We are unable to see how an arrangement made in 1990 between the shareholders of the family company Nadchatiram Realties (1960) Sdn Bhd where a reference was made about Saraswathy's entitlement to a quarter share of a piece of land and a statement by her late mother made in December 1985, neither of which were made in contemplation of these two suits which were filed by Vijayalakshmi against Jegadevan in 1992 and Suseela Devi in 1993, can have any bearing as direct monetary reward or payment to Saraswathy in those suits. There is nothing here to suggest that Saraswathy had received those alleged financial benefits way back in 1990 in contemplation of these two suits. For the prohibition in r. 27(a) of the Practice and Etiquette Rules 1978 to apply, it must be shown that the financial benefits of the transaction were received by Saraswathy directly in connection with the two suits.

We, therefore, allow the appeal with the result that the originating summons is dismissed.

Costs to the appellant here and in the court below.